

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

KENNETH LEE,

Plaintiff,

v.

**JERRI TAYLOR; LANCE ALBERT; RON
MILES; DAVE LILIENTHAL; DWIGHT
HAWKINS and NINA SOBOTT,**

Defendants.

Case No. 2:17-cv-00822-AC

ORDER

Michael H. Simon, District Judge.

United States Magistrate Judge John V. Acosta issued Findings and Recommendation in this case on April 19, 2019. ECF 55. Magistrate Judge Acosta recommended that Defendants' Motion for Summary Judgment be denied because Defendants failed to meet their burden to establish that Plaintiff did not adequately exhaust his administrative remedies. No party has filed objections.

Under the Federal Magistrates Act ("Act"), the court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate judge's findings and recommendations,

“the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3).

If no party objects, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) (“There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate’s report to which no objections are filed.”); *United States. v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (holding that the court must review *de novo* magistrate judge’s findings and recommendations if objection is made, “but not otherwise”).

Although review is not required in the absence of objections, the Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that “[w]hen no timely objection is filed,” the court review the magistrate judge’s findings and recommendations for “clear error on the face of the record.”

No party having made objections, this Court follows the recommendation of the Advisory Committee and reviews Magistrate Judge Acosta’s Findings and Recommendation for clear error on the face of the record. No such error is apparent. Accordingly, the Court **ADOPTS** Magistrate Judge Acosta’s Findings and Recommendation, ECF 55. Defendants’ Motion for Summary Judgment (ECF 30) is DENIED.

IT IS SO ORDERED.

DATED this 7th day of May, 2019.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge